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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,265	07/06/2001	Kazuhiro Yabuta	JP920000193US1	7588

36736 7590 05/22/2008

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 05/22/2008

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/900,265
Filing Date: July 06, 2001
Appellant(s): YABUTA ET AL.

Mr. Francis Lammes

For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

Pursuant to the remand under 37 CFR 41.50(a)(1) by the Board of Patent Appeals and Interferences on January 31, 2008 for further consideration of a rejection, a supplemental Examiner's Answer under 37 CFR 41.50(a)(2) is set forth below:

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on 6/22/2006 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

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(6) Grounds of Rejection to be Reviewed on Appeal

NEW GROUND(S) TO BE REVIEWED

Whether or not claims 6-9,16,17 are unpatentable over Fox (US 6,421,781) in view of Appellant's Admitted Prior Art (APA) under 35 U.S.C. 103(a). This is a new ground of rejection to be reviewed and the corresponding rejection is advanced below under section "(9)" of this Supplemental Examiner's Answer.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,421,781

Fox et al

7-2002

Appellant's Admitted Prior Art (APA)

(9) Grounds of Rejection

The following new ground(s) of rejection are applicable to the appealed claims:

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9,16,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox (US 6,421,781) in view of Appellant's Admitted Prior Art (APA).

Regarding claim 6

Fox discloses a commodity purchasing method through a network, comprising the steps of:

- receiving a connection request from a device (FIG 2);
- determining whether the connection request includes an identifier (FIG 3), wherein the identifier corresponds to an identification code of a cellular phone (FIG 3) and wherein the identifier identifies that the connection request is from a cellular phone (FIG 3, item 302);

- in response to the connection request including the identifier, performing the following steps;

- storing the identifier and user status information associated with the identifier in a database contained in a system for receiving the connection request (FIG 3); and

- executing session control using the identifier and the user status information (col 2, lines 23-65);

As observed by the Board in Appeal 2007-1930:

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"Fox discloses a server, such as device 202, which provides information accessible to other computing devices on the Internet 104 (Fox, col.5, 11. 27-29). Fox discloses that other such computing devices connected to the Internet can be desktop personal computers (Fox, col. 3, 1. 55). It would appear that the server 202 provides information accessible to both computers and mobile devices, and thus receives connection requests from both types of devices.

APA describes using history information, i.e., a cookie, to effect session control where the connection request involved is not from a mobile device (instead, a computer) as required by claims 6 and 16. (Specification 3:5-9)

As to the limitation in claims 6 and 16 of "determining whether the connection request includes an identifier, wherein the identifier corresponds to an identification code of a cellular phone and wherein the identifier identifies that the connection request is from a cellular phone," Fox discloses:

Referring to the table in FIG. 3, a subscriber ID list 302 maintains a list of subscriber IDs of the mobile devices..." (Fox col. 6, 11. 29-30)

The URLs representing the information subscribed to by the user are grouped and maintained in URL table 306. It can be appreciated that subscriber ID list 302 generally maintains a plurality of subscriber IDs, each corresponding to one mobile device...(Fox, col. 6, 11. 43-49)

Fox would appear to disclose determining an identifier (ID) associated with a mobile device as required by claims 6 and 16 because, in Fox, the IDs in list 302 are grouped together as mobile devices, and any connection request using an ID from this group (302) would be known or identified by the system as being associated with a mobile device based on the group classification."

Accordingly, it would have been obvious to one of ordinary skill in the art to have provided the combination of Fox and APA. All of the recited steps are shown by the combination of Fox and APA and there is no evidence of unpredictable results. Under these circumstances, "[t]he combination of familiar elements according to known methods is likely to be obvious when

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it does no more than yield predictable results." KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1739 (2007)."

Regarding claim 7

Fox teaches executing the connection request using the appropriate session control (col 4); receiving a result from the execution of the connection request; and returning the result to the device (FIG 2).

Regarding claim 8

Fox teaches wherein the network comprises a first network for communicating with the device and a second network for communicating with the cellular phone (FIG 2, Landnet, Airnet) and the method further comprises a step of sending the connection request to the cellular phone through the second network (FIG 2).

Regarding claim 9

Fox teaches the step of adding the identification code corresponding to the identifier to said connection request sent to the cellular phone (FIG 3).

Regarding claim 16

Fox discloses commodity purchasing method through a network, comprising the steps of:

- receiving a connection request from a device;
- determining whether the connection request includes an identifier, wherein the identifier corresponds to an identification code of a cellular phone and wherein the identifier identifies that the connection request is from a cellular phone;
- and

- in response to the connection request not including the identifier, executing session control using history information that is communicated between a system and the device (see discussion of claims 6-9 above).

Regarding claim 17

Fox teaches executing the connection request using the session control; receiving a result from the execution of the connection

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request; and returning the result to the device (see discussion of claim 7).

(10) Response to Argument

Appellant's arguments are moot in view of the examiner's new ground of rejection.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

Appeal 2007-1930, Application number 09/900,265.

For the above reasons, it is believed that the rejections should be sustained.

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Conclusion to Supplemental Examiner's Answer

The appellant must within **TWO MONTHS** from the date of the supplemental examiner's answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the rejection for which the Board has remanded the proceeding:

(1) **Reopen prosecution.** Request that prosecution be reopened before the examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit, or other evidence. Any amendment, affidavit, or other evidence must be relevant to the issues set forth in the remand or raised in the supplemental examiner's answer. Any request that prosecution be reopened will be treated as a request to withdraw the appeal. See 37 CFR 41.50(a)(2)(i).

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. If such a reply brief is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened under 37 CFR 41.50(a)(2)(i). See 37 CFR 41.50(a)(2)(ii).

Extensions of time under 37 CFR 1.136(a) are not applicable to the **TWO MONTH** time period set forth above. See 37 CFR

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1.136(b) for extensions of time to reply for patent applications
and 37 CFR 1.550(c) for extensions of time to reply for ex parte
reexamination proceedings.

Respectfully submitted,

/Mark Fadok/

Primary Examiner, Art Unit 3625

Conferees:

/J. A. S./

Supervisory Patent Examiner, Art Unit 3625

Jeffrey Smith

SPE AU 3625

Vincent Millin /VM/

Appeals Practice Specialist

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A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:



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Director

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RELATED PROCEEDINGS APPENDIX



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09/900,265	07/06/2001	Kazuhiro Yabuta	JP920000193US1	7588
36736 7590 01/31/2008 DUKE W. YEE YEE & ASSOCIATES, P.C. P.O. BOX 802333 DALLAS, TX 75380			EXAMINER FADOK, MARK A	
			ART UNIT 3625	PAPER NUMBER
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAZUHIRO YABUTA,
MASAAKI ISHIBASHI and TAKASHI ISHII

Appeal 2007-1930
Application 09/900,265
Technology Center 3600

Decided: January 30, 2008

Before HUBERT C. LORIN, ANTON W. FETTING, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

JOSEPH A. FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134(a) from the final rejection of claims 6-9, 16 and 17.

Claims 6-9, 16, and 17 stand rejected as being anticipated by Fox under 35 U.S.C. § 35 U.S.C. § 102 (e).

Representative claim 6 reads as follows:

6. A commodity purchasing method through a network, comprising the steps of:

receiving a connection request from a device;

determining whether the connection request includes an identifier, wherein the identifier corresponds to an identification code of a cellular phone and wherein the identifier identifies that the connection request is from a cellular phone;

in response to the connection request including the identifier, performing the following steps:

storing the identifier and user status information associated with the identifier in a database contained in a system for receiving the connection request; and

executing session control using the identifier and the user status information; and

in response to the connection request not including the identifier, executing session control for the device using history information that is communicated between the system and the device.

The reference set forth below is relied upon as evidence of anticipation:

Fox	US 6,421,781	July 16, 2002
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In addition to the prior art cited by the Examiner, we also refer to the following additional prior art.

Appellants' Admitted Prior Art (Specification 1:7-6:13)

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Claims 6 and 16 are the sole independent claims from which all dependent appealed claims depend. Claims 1 and 16 stand rejected under 35 U.S.C. § 102 (e) as being anticipated by Fox.

Claims 6 and 16 require:

...in response to the connection request not including the identifier, executing session control using history information that is communicated between a system and the device.

We interpret this phrase as requiring a request, not otherwise including an identifier, to cause execution of the session control using history information that is communicated between a system and the device. The Specification describes "history information" in the following context:

If the EC server determines that no identifier is contained at step 803, it assumes that the HttpReq is sent from a computer 7 and executes initialization, TRANS INIT(Cookie), for performing session control using history information such as a cookie at step 804. (Specification 18:2-6)

Thus, claims 6 and 16 require history information, which has been established between the system and device, such as a cookie, to cause execution of the session control where no mobile device identifier is found.

In reply to this limitation, the Examiner noted the following passage in Fox:

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The communication protocol of the World Wide Web (WWW) on the Internet 104 is the well known HyperText Transport Protocol (HTTP) or HTTPS, a secure version of HTTP. HTTP runs on top of the Transport Control Protocol (TCP) and the Internet Protocol (IP). HTTP is [sic, is] used to control the connection of a well known HyperText Markup Language Web browser, or HTML Web browser in PC 110, to Web server 112, and the exchange of information therebetween. (Fox, col. 4 ll. 24-32)

We cannot find that the requirement of claims 6 and 16 of “in response to the connection request not including the identifier, executing session control using history information that is communicated between a system and the device” is met by Fox with sufficient specificity to support sustaining a rejection under 35 U.S.C. § 102 (e). “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

The decision of the Examiner is reversed.

REMAND

We also remand this application to the Examiner for consideration of whether a question of patentability arises with respect to claims 6-9, 16 and 17 under 35 U.S.C. § 103(a) given the combination of Fox and the Appellants' Admitted Prior Art (APA).

Fox discloses a server, such as device 202, which provides information accessible to other computing devices on the Internet 104 (Fox, col.5, ll. 27-29). Fox discloses that other such computing devices connected to the Internet can be desktop personal computers (Fox, col. 3, l. 55). It would appear that the server 202 provides information accessible to both computers and mobile devices, and thus receives connection requests from both types of devices.

APA describes using history information, i.e., a cookie, to effect session control where the connection request involved is not from a mobile device (instead, a computer) as required by claims 6 and 16. (Specification 3:5-9)

As to the limitation in claims 6 and 16 of "determining whether the connection request includes an identifier, wherein the identifier corresponds to an identification code of a cellular phone and wherein the identifier identifies that the connection request is from a cellular phone," Fox discloses:

Referring to the table in FIG. 3, a subscriber ID list 302 maintains a list of subscriber IDs of the mobile devices..." (Fox col. 6, ll. 29-30)

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The URLs representing the information subscribed to by the user are grouped and maintained in URL table 306. It can be appreciated that subscriber ID list 302 generally maintains a plurality of subscriber IDs, each corresponding to one mobile device...
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Fox would appear to disclose determining an identifier (ID) associated with a mobile device as required by claims 6 and 16 because, in Fox, the IDs in list 302 are grouped together as mobile devices, and any connection request using an ID from this group (302) would be known or identified by the system as being associated with a mobile device based on the group classification.

Thus, Fox and APA appear to show all the claimed steps. There appears to be no evidence of unpredictable results. Under these circumstances, “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1739 (2007).

Accordingly, we remand this application to the Examiner to consider whether any of the subject matter of the pending claims would have been obvious to one having ordinary skill in the art at the time of the invention in view of the teachings of Fox in combination with the APA.

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This remand to the Examiner pursuant to 37 CFR § 41.50(a)(1) is made for further consideration of a rejection. Accordingly, 37 CFR § 41.50(a)(2) applies if a supplemental examiner's answer is written in response to this remand by the Board.

REVERSED AND REMANDED

vsh

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